

## Definition and value of federalism

### I. THE DEVELOPMENT OF THE THEORY ON FEDERALISM

The “father” of federalist theory is **Johannes Althusius** or **Althaus** (1557-1638). His work, dating from 1612, which describes society, is close to the theory on federalism. In his view, the basis of society is the contract: coexistence, cooperation and a respect for the autonomy of every group. A union presupposes compromise achieved by communication. Therefore this is a “bottom up” vision of society in the state.

The work, “De statu regorum Germania” (1661), by **Ludolph Hugo** follows on from Althusius’ work. In addition to confederations of states and decentralised states, he also describes federal states. These are states which have a “double” government. Sovereignty is divided, but there is no hierarchy between the levels of government. The Holy Roman Empire of the German nation or the German Empire certainly had an autonomous government at two levels at least: one at the level of the Empire as a whole, ruled by the emperor, the other at the level of the principalities, in which some of the heads of state elected the emperor.

In his work, “L’esprit des lois” (1748), **Charles-Louis de Montesquieu** submits that a federation has advantages for some regions: small states cannot split up into smaller entities, and large states have the power to defend themselves, protect their interests against external threats, and have more funds from taxation. Federations provide advantages of both kinds of state.

### II. DEFINITION OF FEDERALISM

The American political scientist, Preston King, defines federalism as “an institutional arrangement, taking form of a sovereign state, and distinguished from other such states solely on the fact that its central government incorporates regional units in its decision procedures on some constitutionally entrenched basis”. In his view, the constitutional basis of the whole construction (the federation), the autonomy of the composite parts (territorial or functional) with their own decision-making power (“self-rule”), and the participation of those parts in the decision making of the whole structure (“shared rule”), are the essential characteristics of a federal system of government.

Federalism as such is a government structure which does not have to be state-based or public. The political scientist, Daniël Elazar (who died in 1999), emphasises that federalism can be measured in any type of organisation. It is a matter of the level of autonomy of the parts and of the whole, and of cooperation on an equal footing, compared to the degree of hierarchy, while the organisation of government cannot be unilaterally modified either by the whole (the

federation), or by (one of) the parts (federated states). This organisation can be either a federal state,<sup>1</sup> or a part of a state, e.g., the internal organisation of a federated state in a federal State, or a public institution with functional and/or territorial autonomy, an international institution, or even a private organisation. Therefore the concept of federalism has a broader scope of application than the state.

The typical characteristics of federalism can be summarised as follows:

1. autonomy of the federated areas (“self-rule”)
2. the autonomous operation of the whole, the federation
3. participation of these areas in the federal decision making (“shared rule”).

These characteristics entail autonomy and solidarity.

However, the core of federalism itself consists of a *completely reciprocal* agreement between independent governments, in which they agree that they form a whole so that certain powers can be exercised by institutions acting on behalf of that whole. This contract is *absolutely reciprocal* in the sense that it can only be amended with mutual consent, both by the composite parts and by the whole. This agreement can only be cancelled if all, parts and the whole, agree. A new agreement between all the governments is therefore required for a change in the relationship between the individual parts, or between the parts and the whole. This means that a change to the contract can only be introduced by all the parts and the whole; this applies both for a change in the balance of power between the individual parts, or between them and the whole, and for the accession to the whole, the exclusion or the secession from it.

Therefore federations are not distinguished from other forms of states by a hierarchy between the federal and the regional regulations (e.g., Germany: the rules are drawn up federally, implemented regionally) or by competing powers (these can also be found in states with a single level of government), or by the method of decision making (by consensus or with a majority), or by the centre of gravity of the balance of power – the greatest or most important power can be exercised both federally and regionally, but there is always a sort of federation if the basic political agreement (constitution) is completely mutual. Obviously those characteristics form parameters against which the level of solidarity can be measured. A federation in which many decisions are taken by a majority of the composite parts with a majority shows that there is a link between those members which is stronger than that of a federation in which these decisions of the parts have to be taken by consensus, say unanimously.

The decisions for the whole must always be taken by an institution which represents the whole. If not, there is not a federation. The way in which this is done only reveals the degree of connection, i.e., the strength of the federation, or, in other words, solidarity.

Therefore a federation differs fundamentally and essentially from other forms of organisation, because of this absolute reciprocity of agreement when the balance of power is changed.

This is what distinguishes a federation from a *confederation*. A confederation is a reciprocal agreement between governments, usually states, which can be unilaterally terminated by one

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<sup>1</sup> According to the philosopher, Max Weber, a state is any organisation which can legitimately exercise violence, in or for a particular territory. This violence is exercised by the police and military services. The political scientist, Giandomenico Majone, submits that a state is any organisation which acts in a regulatory manner (“the regulatory state”).

of the members. A confederation creates a similar bond to that in a marriage or other forms of personal relationship: they are both based on a reciprocal agreement, but can be terminated unilaterally. The confederation derives its power solely from its members. It does not have any power from itself, and therefore does not have its own “sovereignty”, because the whole is not represented as such. The whole only exists as the sum of the parts. The concept of confederalism is usually used for the establishment and the operation of international organisations. Therefore the main distinction between a federation and a confederation lies in the basis of their unity: a federation has a completely reciprocal basic act (constitution), while a confederation has a contract (treaty) which can be unilaterally terminated.

Federalism also differs from *decentralisation*. A government structure is decentralised if the central government unilaterally gives power to institutions which can then independently use the power delegated to them. However, the central government can always unilaterally withdraw this power. Furthermore, it exercises a certain form of supervision on the decentralised institutions.

Therefore a federation differs essentially from other forms of government because of the specific permanently mutual division of the highest power, i.e., of the sovereignty between the parts of the whole and the whole itself (the federation). In a federal organisation there is no double sovereignty, because this would mean powers completely separate from each other, but a divided, shared sovereignty (“sovereignty sharing”). The two levels of government, the federal level (the whole) and the regional level (the parts), each independently exercise a part of this sovereignty (both are autonomous within their respective powers), and this autonomy can only be changed with the reciprocal agreement of each government concerned. Furthermore, the federated states also participate in the decision making in this capacity at the federal level.

Sovereignty is divided in a federal state system, but is also complementary. This means that it does not go so far that the federation can abolish a federated state, or that a federated state can secede from the federation without the agreement of the federation and of the other federated states. After all, the essence of a federal state system is that the survival of the federation and of its parts is guaranteed: the termination or a change in its composition or balance of power is permitted only with mutual consent at the federal and regional levels.

### **III. TYPES OF FEDERAL STATES**

Federal states are very different in terms of organisation. There are almost as many types of federal systems as there are federations, because every federation has its own character. Nevertheless, it is possible to classify federal systems in four different ways, depending on the criterion used for distinguishing them, based on the distribution of the power of government itself or on the competences in terms of content.

Usually the double government develops on the basis of cooperation (federalisation) between autonomous areas or even independent states, i.e., from the “bottom up” (e.g., USA - “*e pluribus unum*”, Canada, Switzerland), but this is not necessarily the case. The reverse “top

down” situation, or the defederalisation<sup>2</sup> of a centrally governed state into a federal state, also occurs (e.g., Belgium, Czechoslovakia after the Second World War). This difference in the political process of the creation of the federation usually has an effect on the type of federation: federalisation is aimed at solidarity and is consequently centripetal, while defederalisation aims to ensure the recognition of identities, and is therefore centrifugal. That is why federations which develop from the bottom up aim at cooperation, while federations which develop from the top down aim at autonomy.

A distinction is made between jurisdictional and functional federations. The distinguishing criterion is whether or not the three horizontal powers are united at a single level of government, viz., the legislative power, the executive power and the judicial power. In jurisdictional federations, two or three powers are united at every level, both the federal and the regional level. Therefore there is less policy-related dependence between the two levels of government. This is the case in Australia, Belgium and Canada. In functional federations these powers are spread across the levels of government to a great extent. This means there is a great deal of mutual dependence in governmental affairs. Germany, Austria and Switzerland are functional federations.

In terms of the autonomy of the funds, a federation can also be classified as having a character based on autarchy or solidarity. In this respect, the criterion is the degree of financial autonomy of the levels of government. The federation is autarchic if both levels are predominantly autonomous in terms of income and expenditure. This is the case in Germany. A federation is characterised by solidarity if the federation collects most of the funds and divides them amongst the federated states. Belgium is a state characterised by a high degree of solidarity (only 25% of the regional income is directly collected). Canada has a central position: approximately 45% of the provincial income is collected by the provinces themselves.

Federations can be organised in an exclusive or competitive way. They are distinguished by the degree of separation between the policy areas measured in the distribution of powers across the two levels of government. In other words, it is examined whether there are many or few policy areas in which both levels are competent. In exclusive federations, most of the policy areas fall wholly or predominantly under one level of government, either the federal or the regional level. This means that the federal and regional rules are rarely in competition with each other and consequently there is little need for a hierarchy between the federal rules and the regional ones, or for another juridical solution. This is the case in Belgium, where many areas are wholly or virtually wholly assigned to a particular level of government. On the other hand, in competitive federations, most policy areas are spread across both levels of government. This is the case in Switzerland.

A distinction can also be made between inter-state and intra-state federations. For this, the criterion is the type of organisation of the dialogue and any cooperation which takes place between the federation and the federated states, and between the federated states themselves. Inter-state federations use so-called intergovernmental conferences with representatives of both levels of government as the most important forum to reach joint decision making. This is the process in Belgium and Canada. Intra-state federations aim at joint decision making with institutions which are either federal or regional. For example, in Germany the representatives

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<sup>2</sup> To federate (federalism, federation, federal) means to unite, connect, because the word is derived from the Latin word “foedus” (gen., “foederis”). This means union, agreement or cooperation. To refer to the reverse process, viz., dissolve, separate, it is possible to use words such as “defederalise” or “defederalisation”.

of the two levels discuss and decide together in a parliamentary chamber of the federation (the “Bundesrat”).

#### **IV. ASSETS AND HANDICAPS OF A FEDERATION**

A federation has at least two different levels where the independent exercise of power is guaranteed. This is one level more than in a unitary state, which may or may not be decentralised. There are at least three autonomous centres of power, and different legal systems, two at the regional level of government and one at the federal level. This is at least two more than in a unitary state. This means that the federal system necessarily has a specific influence on the way in which society works, in a social and political sense.

The question is whether this influence on social life and on the political forum is positive or negative, or both, and to what extent this is the case.

##### 1. Division of powers

A federation by definition entails the distribution of the highest power or sovereignty between the federal level of government and that of the federated states. Therefore there can be no monopoly of power in a real federation. After all, there are at least three centres of power in a federal state. Consequently, federalism and dictatorship are mutually exclusive, because dictatorship in a state by definition entails a monopoly of power. A federal dictatorship is a contradiction in terms. At best, a dictatorship can allow decentralisation. A unitary state can be a dictatorship, and vice versa, but a true federation can never be a dictatorship.

Therefore federalism excludes a dictatorial type of government. At least three centres of power must be able to decide and act independently of each other up to a certain degree. In some cases the centres of power will have to negotiate with each other so that the federation as a whole can be governed in a coherent way, and they will have to cooperate in order to carry out cross-border or joint projects.

Therefore, it is not enough for a state to have a constitution with a federal organisation to be viewed as a federation. There will always have to be a political examination to see whether there are three or more autonomous centres of power in a particular state.

In this way, federalism promotes the ability to negotiate and make compromises, because the cooperation and coordination between these equal partners are inevitable in a federation. Even if the joint decision ultimately does not meet the maximum requirements of some of the parties, the confrontation and participation in the dialogue will still result in greater solidarity than a solution which is imposed from the top down by a central institution which does not take its regional implications into account.

The indisputable and universal asset of a federation is that it presupposes a minimum of democratic (oligarchic) governance. No true federal system can develop or survive without achieving and maintaining this vertical division of powers between two levels of government. This political and juridical division of power serves as an obstacle to the concentration of

power which is needed to establish a dictatorship. The absolute reciprocal guarantee for the autonomy of the federation as a whole, and of the individual federated states, means a strong base for maintaining any joint decision making by consensus or by majority rule, i.e., with a democratic standard.

## 2. Decisions at a shorter distance

By definition, federations have at least one level of government more, closer to the citizens, than centrally governed states. This also promotes the capacity of the government to respond: the lower the level of decision making, or at least, the closer the participation in the decision making is to the tasks to be carried out, the greater the chance that the challenge will be tackled rapidly. Obviously this faster response does not necessarily improve the quality of the execution.

However, research has shown that the population more readily entrusts its regional problems to regionally elected representatives than to those of a distant political centre. The proximity of the citizens and of the activities to be carried out at a regional level is the benefit of a federal system.

## 3. The accumulation of identity and solidarity

Federalism certainly results externally in a “win-win” situation for both the parts and the whole, as Montesquieu indicated in the middle of the 18<sup>th</sup> century: as a federation, the federated states are stronger than each of them individually, and at the same time the federation guarantees the federated states a degree of autonomy (shared sovereignty). States which claim their identity and justify their existence on the basis of differences in language, religion, culture, economic structure etc., retain their autonomy to a certain degree, while at the same time they form a whole to combine their funds and their instruments so that all can be stronger together in joint projects and in relation to other states outside the federation. There certainly is unity (solidarity) in diversity (identities).

Federalism provides a structural solution for some conflicts between culturally diverse states, or in such a state which is centrally governed. After all, it means that there is a structural agreement (mutual contract, constitution) which has been entered into voluntarily between politically equal parties. On the one hand, the existence of the federated states is guaranteed by that constitution and, on the other, the states surrender some of their sovereignty to the whole, the federation. Any federal system is a balanced compromise which works in a completely reciprocal way. On the one hand, it means that the federated states cannot unilaterally revise this surrender from sovereignty, while on the other hand, the federation cannot use the level of sovereignty it has been granted to change or withdraw the level of sovereignty of the federated states. The federation guarantees also a certain degree of solidarity between the parts.

## 4. Competition between governments

The functioning of the federal government and the federated states also results in a degree of competition between the federal level of government and that of the federated states, and between the governments of the federated states themselves. The dynamic character of the governments is promoted by the competitive structure of federal and regional autonomy: the

most effective and efficient government benefits power and prestige. A centrally governed state cannot provide as much experience and consequently learning processes and standards. In fact, it has a monopoly of power. This does not apply exclusively with regard to economic parameters. It also concerns problem solving creativity in other policy areas, such as education, welfare and safety.

This is obviously the case in competitive types of federations, but the stimulus of policy related competition can also play a role in exclusive systems. Although policy areas are clearly exclusively divided over the levels of government, they can still give rise to competition between governments. They can even be complementary. The result achieved by one federated state in a particular policy area can certainly serve as an incentive for another federated state to achieve a similar result with the same or other instruments. For example, this is the case in Belgium in the fields of education and the economy.

Are there no handicaps in a federal state structure? Of course there are.

### 5. Diversity of rules

A centrally governed state makes it easy for its subjects to determine which institution or which governing body makes the rules and which is competent to execute them and is therefore liable for which measures. In a federation this is certainly more complicated. There is a diversity of rules because there is a division of power between the federal level of government and the governments of the federated states.

In a federation the legal position of the citizens differs in the different federated states. Citizens have to deal with different legal systems, depending on whether they perform legal acts in two or more federated states. Moreover, if they move to a different federated state they are confronted with different rules. This applies for education in Germany and for a number of taxes in the USA.

Nevertheless, a survey of public opinion has found that citizens prefer to maintain the political organisation of their regional identity in a federation to the transition to a centrally governed state system. For example, research in Germany since 1949 reveals that the federal system is increasingly accepted, despite the significant and long term migration from East to West.

Furthermore, this diversity of rules can also be found in many unitary states, because most are decentralised to a certain extent, also in a territorial sense.

### 6. Complexity of government

A federal state structure has a number of equally autonomous levels of government, and at least one level of government more than another system. Therefore, it is more complex for those in government. This situation is specific for federations because decentralisation means unequal partnership.

A federation leads to additional institutions to operate the whole organisation of the state, in comparison with a unitary state. For example, specific institutions are needed to coordinate policy, for cooperation and the settlement of conflicts between the federal and the regional level (e.g., ministerial conferences, courts of justice, etc.). However, the savings made by the

federation compared to the wholly sovereign and independent existence of the federated states must be deducted from the extra expenses incurred by this.

Those different levels of autonomous government (viz., regulatory powers, their elaboration, implementation and control) require deliberation before and after the decision making in those levels of government, and this is not necessary in a centrally governed state system. This need for concertation is the inevitable consequence of the existence of the various centres of power side by side, although they form a whole as a federation. For some policy matters, both horizontal coordination and cooperation between the federated states themselves remain necessary, as well as vertical coordination between them and the federation with its own powers, e.g., areas which have a cross-border impact in a literal or figurative sense.

#### 7. Lack of transparency of government

Political, financial and economic tuning of policy between the various centres of power requires an extremely intense dialogue, close cooperation and far-reaching co-funding between the levels of government, particularly with regard to the economic development of the federated units. The series of intergovernmental conferences and the network of reciprocal agreements under pressure of joint objectives and a lack of means, can lead to a hazier political liability in the eyes of citizens. This lack of transparency in decision making can weaken the legitimacy of the federal system, i.e., its acceptance by the citizens.

Consequently, it is important to clearly identify the liability for the decisions. Usually this is not so easy in a federation, but it may be difficult in other state systems as well, for two reasons. Compromises of any nature between governments presume the partial responsibility of all the participants in the decision making process. Furthermore, it is a fact that the leading role of administrations in the development of the intergovernmental dialogue and the network of agreements do lead to less transparency.

In fact, the permanent need for policy coordination and cooperation between governments strengthens the position of administrations at the expense of parliaments. It is easier for ministers and their experts to use diplomacy and act in a fast and flexible way than for parliaments to do so. This challenge to legitimacy is acute in the European Union at the moment, but it is also latent in established federations.

In unitary states this transparency of government appears to be higher for citizens. However, centrally governed states are faced with a different handicap in the field of liability. In fact, this liability becomes even more confused and is more disputed as the distance between the social problem and the policy increases. As indicated above, the distance between both is inversely proportional to the speed with which the problem is discovered and tackled.

#### Evaluation

The indisputable and universal advantage of a federation is that it is incompatible with a dictatorial government. No federation can really work without a (vertical) division of power. Furthermore, a federal state system has a regional (additional) level of government which is closer to its citizens. It combines the benefit of greater cohesion, an enlargement of scale, with the asset of smaller societies in which the cohesion cannot easily disappear.

Another general advantage of a federal system is the spirit of competition between the levels of government. This competition can never be as open and fair in a centrally governed state, even if it is decentralised. Indeed, decentralisation leads to various functional and territorial monopolies, side by side.

However, the complex and confused decision making in federations is often blamed for stirring up conflict, and wasting when the problems should be tackled. This can be the case in federations, where the two levels of government obstruct each other for a long time, or where the division of power is complicated. However, these problems occur just as much in centralised states, as in a dispute between houses of parliament or between parliament and the head of state, e.g., in presidential state systems, such as France (“cohabitation”) and the USA, where different political parties can dominate the different institutions.

Those handicaps in terms of complexity regarding the decision making process, as well as the diversity of rules, are not actually found to the same extent in all federations. Their significance depends on the specific organisation of the federation concerned, and the socio-cultural situation in the country concerned, in particular the type and the number of cleavages in society. After all, federations can be divided up along socio-cultural lines, into the category of “uniform” (homogeneous) or “diverse” (heterogeneous) federations, just like states organised in a different way.

The number of federated states and the way in which power is divided equally determine the significance of the negative factors, such as diversity, complexity, lack of transparency and inefficiency. The extent to which the democratic assets of federalism weigh up against those social and political costs seems to depend on the number of federated states. If there are too many, the need for interaction can hinder the democratic and federal processes too much; if there are too few, decision making can be obstructed or delayed as the result of a stalemate. A simple division of competences can limit the handicaps, as well as the operating costs of specific institutions such as deliberation bodies and courts of justice. The degree of shared powers and competitive powers determines the diversity and the complexity for the rulers and the citizens.

One convincing argument pleading for a federal state system in many cases concerns the institutional developments in a number of countries. Federations which were established from the bottom up, such as the USA and Switzerland, do not change into states with a central government. Countries which restored a federal tradition, such as Germany and Austria, do not do so either. On the contrary, unitary states become federal, regionalised or decentralised states. In Western Europe this is increasingly the case. Examples of this can be found in Belgium, Italy, Spain and Great Britain. Even in France, there is a form of regional autonomy on the political agenda, particularly with regard to Corsica. Apparently, the social cost of the difference in government does not counterbalance the benefit of the political recognition of regional identities. The diversity of political centres is even seen in federations as the necessary and safest protection against the excessive uniformity imposed by a single centre of power.

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